IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2358 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R A VYAS

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2358 of 2001

TANNA ASSOCIATES for Petitioner No. 1

MR PITAMBER ABICHANDANI A.G.P. for Respondents No. 1-3

NOTICE SERVED BY DS for Respondents No. 4-5

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 19/10/2001

ORAL JUDGEMENT

1. Rule. Mr.Pitamber Abichandani, learned A.G.P. appears and waives services of rule on behalf of respondents.

2. After service of notice respondent No.2 has filed affidavit of resistance. This petition is heard today finally on consent.

3. Learned A.G.P. Mr.Pitamber Abichandani has submitted that in compliance of the order passed by this Court dated 28.9.2001, the responsible officer from the concerned department is present with relevant record for perusal. I have perused the relevant papers from the file brought by the officer.

4. The petitioner has challenged the action of not promoting petitioner to the higher post, by invoking jurisdiction under Article 226 of the Constitution of India, and has prayed for appropriate direction or order to promote him to the post of Joint Director Animal Husbandry with retrospective effect over respondents Nos. 4 and 5. There is no affidavit of resistance from respondents Nos.4 or 5.

5. The grievance of the petitioner is that though he is senior to respondents Nos.4 and 5. He has not been promoted to the post of Joint Director by the respondents without any legal or legitimate cause. The act of giving promotion to respondents Nos.4 and 5 and not promoting the present petitioner is arbitrary and illegal act and therefore the same should be turned down.

6. Having gone through the averments made in the petition and especially the ground alleged by the petitioner in para 4 of the petition. Without discussing the case put forward by the petitioner, if the stand taken by respondents No.2 is appreciated then this Court can legitimately conclude the issue in view of the settled legal proposition. Certain undisputed facts revealed from the affidavit-in-reply shows that the petitioner was at the relevant point of time in the feeder cadre and was considered by promotion committee. D.P. Committee had prepared select list of officers who otherwise could be promoted to the post of Joint Director Animal Husbandry. The said select list was prepared on 25.1.99. For short, the selection committee had selected and recommended the name of the present petitioner for promotion. The select list was sent to G.P.S.C. for consideration and approval and the G.P.S.C. had, after considering all the relevant aspect had approved the said list. It is on record that the papers relating to alleged pending (proposal at that point of time) preliminary enquiry against the present petitioner were also considered by the G.P.S.C. Even the name of the

present petitioner was not dropped from list and the same was approved.

7. It is undisputed that respondents Nos.4 and 5 are juniors to the present petitioner and by passing the present petitioner, respondents No.4 and 5 are promoted. On perusal of the file brought by the department on instructions it is clear that some conscious decision to institute the departmental proceedings against the present petitioner was taken on 26.3.2001. So on 25.1.1999 when he was selected by the selection committee there was no conscious decision of institution of departmental proceedings. The file indicates that some inquiry was made by the Vigilance Commission somewhere in the month of May, 1999. The department had thought it fit at later stage to initiate departmental proceedings. Thus, there was no substantive departmental proceedings pending on the day on which the select list was prepared and approved by the G.P.S.C. Merely because some conscious decision was taken for instituting departmental proceedings one should not be debarred from the select list prepared and approved for the promotional post.

8. The counsel appearing for the petitioner has taken me through the settled legal proposition reflected in the well known decision in the case of Union of India v. K.V Jankiraman reported in 1991 A.I.R. S.C. 2010 and the decision of the Apex Court in case of Delhi Jal Board v. Mahinder Singh reported in A.I.R. 2000 SC 2767, wherein the Apex Court has observed as under :-

"The learned Single Judge of the High Court accepted the writ petitioners's contention following two judgments of this Court reported in [JT 1999 (4) SC 489=1999 (5) SCC 762] Bank of India v. Degala Suryanrayana and in [JT 1998 (3) SC 123=1998 (4) SCC 154] State of A.P. v. N. Radhakishan and allowed the writ petition. It was held that once the first disciplinary inquiry resulted in favour of the writ petitioner, the benefit of the findings of DPC in the sealed cover should be given to the writ petitioner nothwithstanding the pendency of a second inquiry. In the two judgements of this Court which were followed by the learned Single Judge, it was held that if a person's case had been considered for promotion by the Departmental Promotion Committee and because of pendency of certain charges, the findings of the DPC were [kept in a sealed cover, he was entitled to the benefit of the findings of the selection, if they

were in his favour if the disciplinary inquiry ended in his favour, nothwithstanding the fact that by that date, some other inquiry might have been pending against him.

The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer, if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when the DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the seal was opened to give effect to it, another departmental inquiry was started by the department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection".

10. The Present case is not of the type which was considered by the Apex Court. In the case of Delhi Jal Board (Supra) facts were graver. After considering ratio of both these judgments, this Court has allowed Special Civil Application No.3081 of 2001 (Coram : C.K. Buch, J), by referring other decision of this Court in Special Civil Application No.744 of 1998 (Coram : N.N. Mathur, J).

11. In view of the above settled legal proposition, I am inclined to allow this petition. Respondents are directed to consider the case of the petitioner, if he is found fit for promotion to the post of Joint Director, Animal Husband The respondents should take appropriate decision within four weeks from the receipt of the writ of this Court. The petitioner is entitled to the deemed date as prayed in the petition and is also entitled if promoted for all consequential benefits including the deemed date. Rule is made absolute to the above extent. No costs.

(C.K. Buch, J.)

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